

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.7.502, 12.7.503, 12.7.504,) PROPOSED AMENDMENT
and 12.7.505 pertaining to fish)
importation)

TO: All Concerned Persons

1. On July 9, 2014, at 6:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than June 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.7.502 DESIGNATED PATHOGENS (1) ~~The following salmonid pathogens are determined by the department to pose a threat to existing fisheries~~ Pathogens are classified into categories based on their presence and relative threat to existing state fisheries for purposes of Montana's fish health and importation statutes. ~~laws, 87-3-209, MCA et seq:~~

(2) The following pathogens are designated Class A pathogens and pose a substantial threat to the health of state fisheries:

- (a) infectious hematopoietic necrosis virus (IHNV);
- (b) infectious pancreatic necrosis virus (IPNV);
- (c) viral hemorrhagic septicemia virus (VHSV);
- (d) *Oncorhynchus masou* virus (OMV);
- (e) *Renibacterium salmoninarum* (bacterial kidney disease);
- (f) ~~*Aeromonas salmonicida* (furunculosis);~~
- (g) ~~*Yersinia ruckeri* (type 1, common or Hagerman enteric redmouth disease);~~
- (h) ~~*Myxobolus cerebralis* (salmonid whirling disease);~~
- (e) white sturgeon irido virus (WSIV);
- (f) largemouth bass virus (LMBV);
- (g) spring viremia of carp virus (SVCV);
- (h) koi herpes virus;
- (i) infectious salmon anemia virus (ISAV); and

(j) channel catfish virus.

(2) (3) The following non-salmonid fish pathogens are determined by the department to designated Class B pathogens and may pose a threat to the health of existing state fisheries for purposes of Montana's fish health and importation laws, 87-3-209, MCA et seq:

(a) *Bothriocephalus acheilognathi* (Asian tapeworm);

(b) White sturgeon virus (WSIV).

(b) *Renibacterium salmoninarum* (bacterial kidney disease);

(c) *Aeromonas salmonicida* (furunculosis);

(d) *Myxobolus cerebralis* (salmonid whirling disease);

(e) *Heterosporis* sp.;

(f) Missouri River sturgeon irido virus (MRSIV);

(g) enteric septicemia of catfish (ESC);

(h) PKX proliferative kidney disease (PKD);

(i) *Ceratomyx shasta*;

(j) erythrocytic inclusion body syndrome virus (EIBSV);

(k) *Edwardsiella ictaluri*; and

(l) *Nucleospora salmonis*.

(3) The department may add pathogens to the lists in subsections (1) and (2) as necessary to protect Montana fisheries from introduction or spread of disease.

(4) Based on the availability of new information related to the threat to state fisheries the department will review pathogens designated as Class A and B and will reclassify pathogens as necessary.

(5) The department will review the presence of unlisted pathogens as necessary to determine any risks associated with fish importations. An importation request may be delayed while the department determines the risk of a new pathogen.

AUTH: 87-3-223, MCA

IMP: 87-3-209, 87-3-210, 87-3-221, 87-3-222, 87-3-223, 87-3-224, 87-3-225, 87-3-226, 87-3-227, MCA

12.7.503 CERTIFICATION INSPECTION PROCEDURES (1) Disease-free Pathogen certification inspections as required by 87-3-221, MCA, shall be made using microbiological techniques and procedures which are equivalent to or more sensitive than procedures prescribed as recommended by the most recent edition of the Fish Health Section of the American Fisheries Society in the "Fish Health Bluebook": Procedures for the Detection and Identification of Certain Fish Pathogens., Third Edition, 1985, Kevin Ames. A copy of this publication may be obtained from the American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814-2199.

(2) A surrogate species may be used for pathogen testing and certification purposes when:

(a) the surrogate species is designated by the director and verified by the department as a suitable species for testing;

(b) testing requirements significantly impact the population to be tested, including when population size of sensitive or at-risk species are too small to

undergo lethal sampling; and

(c) the surrogate species has similar likelihood of exposure to pathogens and display similar susceptibilities to various pathogens, particularly Class A pathogens listed in ARM 12.7.502.

(3) Surrogate species test results will be considered as they would for the target species.

AUTH: 87-3-223, MCA

IMP: 87-3-209, 87-3-210, 87-3-221, 87-3-222, 87-3-223, 87-3-224, 87-3-225, 87-3-226, 87-3-227, MCA

12.7.504 APPROVED PATHOLOGISTS (1) Disease-free Pathogen certifications and inspections ~~required by 87-3-221, MCA,~~ shall be conducted by individuals ~~certified by the American Fisheries Society as Fish Health Inspectors or Fish Pathologists.~~ All inspectors and pathologists are subject to approval approved by the director of the department. ~~If an inspection is conducted by an inspector or pathologist not approved by the director, the inspection will not be accepted and another inspection must be conducted by an inspector or pathologist approved by the director prior to approving the importation.~~ Inspectors or pathologists who own benefit from or have a financial interest in the ~~hatchery or fish culture facility being inspected~~ importation may not conduct the inspection ~~for that facility.~~ This does not preclude inspectors employed by state or federal agencies from conducting inspections for facilities operated by the employing agency.

AUTH: 87-3-223, MCA

IMP: 87-3-209, 87-3-210, 87-3-221, 87-3-222, 87-3-223, 87-3-224, 87-3-225, 87-3-226, 87-3-227, MCA

12.7.505 IMPORT PERMITS (1) An import permit must be obtained prior to any importation of fish or eggs. A copy of the import permit must accompany the importation.

~~(1) (2)~~ Application for an import permit must be made by the ~~owner of the destination facility receiving jurisdiction or by an entity designated by the director and.~~ The application must be received at least 10 working days prior to the date of importation. Applications must be provided to Montana Department of Fish, Wildlife and Parks, by the Fisheries Division of the Montana Department of Fish, Wildlife and Parks, in Helena, Montana, 59620.

~~(2) (3)~~ A permit application ~~shall specify~~ must include:

(a) species;

(b) number;

(c) size;

(d) source;

(e) destination;

(f) and date and method of shipment;

(g) pathogen certification;

(h) fish health inspection report;

(i) other disease or inspection information the department deems necessary

to evaluate the pathogen risk; and

(i) if applicable, private pond license number. If the destination is a private pond, the private pond license number shall also be included in the application. No import permit will be authorized to a private pond which is not licensed by the department for the species requested for importation. A copy of any required disease-free certifications shall be submitted with the permit application, along with other disease or inspection information concerning the shipment that may be needed to evaluate the disease risk of the importation. Requests for a permit to import salmonid fish will not be considered unless a disease certification or fish health inspection report of the source of the importation is included with the application.

(4) The department may place conditions on an import permit to minimize any risk to the health of existing fisheries.

(5) An import permit will not be issued for fish or eggs that are confirmed positive for Class A pathogens listed in ARM 12.7.502.

(6) The department will determine whether the threat of fish or fish eggs that test positive for Class B pathogens is substantial and whether to issue an import permit based on consideration of one or more of the following:

(a) whether the importation provides a conservation benefit to the state of Montana, including the conservation of a sensitive or at-risk species;

(b) whether another biologically similar alternative source that is free of Class A and Class B pathogens is available;

(c) whether conditions can be placed on the permit to minimize the health risks to existing fisheries;

(d) the overall risk to the health of state fisheries; and

(e) any other factors the department deems necessary.

(7) Live fish exhibiting clinical signs of a disease may not be imported into Montana.

(3) No import permit for salmonid fish shall be issued unless the source is certified free of pathogens determined by the department to pose a threat to existing fisheries. No import permit for salmonid eggs shall be issued unless the source is certified free of pathogens determined by the department to pose a threat to existing fisheries with the following exceptions. Salmonid eggs from a source known to contain *Myxobolus cerebralis*, causative agent of salmonid whirling disease, *Yersinia ruckeri* (ERM disease agent); or *Aeromonas salmonicida*, causative agent of furunculosis, or from a source which is in a river drainage known to contain *Myxobolus cerebralis*, *Yersinia ruckeri*, or *Aeromonas salmonicida* may be imported into Montana under the following conditions provided they are free of all other infectious agents listed in this rule:

(a) eggs must be water hardened in an iodophor containing a minimum of 75 mg/l active iodine for a minimum of 30 minutes;

(b) eggs must have been incubated from time of egg collection to date of shipping in water free of *Myxobolus cerebralis* spores;

(c) eggs must be disinfected with an iodophor solution containing a minimum of 100 mg/l active iodine for a minimum of 10 minutes before shipping and again upon arrival at their destination in Montana prior to entering any Montana water;

(d) all shipping containers must be burned and no water from the shipment may be allowed to enter any water in Montana; and

~~(e) eggs imported under this exception may only be imported with the recommendation of the department and authorization by the director of the department.~~

~~(4) In addition to the certification requirements, no live salmonid fish may be imported into Montana which are exhibiting clinical sign of any disease or are known to be infected with any infectious disease agent that may pose threat of harm to native or existing fish populations in Montana.~~

~~(5) Import permit requests for live non-salmonid fish or eggs will be considered on a case-by-case basis. Disease certification inspections may be required prior to issuance of an import permit for live non-salmonid fish or eggs. Certification will be required under the following circumstances:~~

~~(a) fish from a source or drainage which is known to contain pathogens determined by the department to pose a threat to existing fisheries. The department may deny any request for a permit it considers a substantial disease risk.~~

~~(b) where salmonids are also raised at the source, the source must be inspected and certified free of designated salmonid pathogens.~~

~~(6) The import permit must be obtained prior to any importation and a copy of the import permit must accompany the importation.~~

~~(7) The department may deny any import permit request it determines may pose a threat of harm to existing fisheries, even if the source or importation has been inspected and no designated pathogens were detected. For example, import permits for fish or eggs from anadromous stocks or drainages to which anadromous fish have access may be denied regardless of disease certification status of the importation or source.~~

~~(8) The department may condition the permit in order to prevent or reduce risk, as, for example, requiring iodophor disinfection of eggs.~~

AUTH: 87-3-223, MCA

IMP: 87-3-209, 87-3-210, 87-3-221, 87-3-222, 87-3-223, 87-3-224, 87-3-225, 87-3-226, 87-3-227, MCA

REASON: These rules are designed to manage the risk level associated with the importation of fish into Montana. Every importation has a level of risk associated with it that could adversely impact the health of state fisheries.

The department is proposing classifying fish pathogens, for importation purposes, based on their presence and relative risk to state fisheries. The pathogens listed as Class A have been determined by the department to pose substantial threat to the health of state fisheries. If Class A pathogens are detected during the importation permit process the importation request will be denied. Class B pathogens pose less of a threat than Class A pathogens. The department will determine their relative risk based on several factors, and there could be rare incidences when the benefit to the state outweighs the risk of the importation of a Class B pathogen.

The proposed amendments also allow for surrogate species to be used for certification purposes under certain situations. For instance, when the importation request is part of a recovery effort for sensitive or at-risk species and the population size is too small to undergo lethal sampling, surrogates could be allowed if they are

representative of the species being imported.

Additional amendments to the rules have been proposed based on new scientific knowledge since the original adoption of the rules.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Fisheries Division, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 444-4952; or e-mail fwpfsh@mt.gov, and must be received no later than July 18, 2014.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ M. Jeff Hagener

M. Jeff Hagener

Director

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State June 2, 2014.